

AMENDED IN SENATE APRIL 18, 2007

**SENATE BILL**

**No. 410**

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**Introduced by ~~Senator Simitian~~ *Senators Simitian and Perata***

February 21, 2007

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~~An act to add Section 25745 to the Public Resources Code, relating to energy.~~ *An act to amend Section 25742 of, and to amend and repeal Section 25740.5 of, the Public Resources Code, and to amend Section 387 of the Public Utilities Code, relating to renewable energy resources.*

LEGISLATIVE COUNSEL'S DIGEST

SB 410, as amended, Simitian. Energy: renewable energy resources.

*Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. Existing law requires the PUC to require the state's three largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected from the renewable energy public goods charge into the Renewable Resource Trust Fund and establishes certain accounts in the fund to carry out specified renewable*

*energy purposes. Existing law requires that the Energy Commission, in carrying out the renewable energy resources program, to optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued with a long-term goal of achieving a fully competitive and self-sustaining supply of electricity generated from renewable sources. Existing law makes legislative recommendations for allocations among specified in-state renewable electricity generation facilities, including that allocations not be made for electricity that is generated by an in-state renewable electricity generation facility that remains under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.*

*This bill would instead recommend that allocations not be made for electricity that is generated by an in-state renewable electricity generation facility having an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.*

*Existing law requires that 10% of the funds collected as part of the renewable energy public goods charge be deposited in the Existing Renewable Resource Account to be used for a program designed to improve the competitiveness of existing in-state renewable electricity generation facilities and to secure for the state specified benefits. Existing law requires the Energy Commission to evaluate existing facilities seeking awards from the Existing Renewable Resource Account and to determine certain matter.*

*This bill would instead require the Energy Commission to evaluate existing facilities seeking awards from the Existing Renewable Resource Account based upon certain matter.*

*The existing renewables portfolio standard program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). Under existing law the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental*

improvement. Existing law requires the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to the Energy Commission and its customers.

This bill would state the intent of the Legislature to preserve the eligibility of electricity generated by a small hydroelectric generation facility that is sold to a retail seller within California, including electricity sold to a local publicly-owned electric utility, to meet the renewable portfolio standard.

Existing law requires that 37½% of the money collected pursuant to the renewable energy public goods charge be used by the State Energy Resources Conservation and Development Commission for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications, and that the funds used for emerging technologies be expended subject to specified requirements. Existing law requires that 51½% of the money collected pursuant to the renewable energy public good charge be used for programs designed to foster the development of new in-state renewable electricity generation facilities. The funding has to be awarded in the form of supplemental energy payments to cover the above market costs of eligible renewable energy resources.

This bill would require the commission, in making awards for the multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications, to complete its determination regarding awarding of supplemental energy payments no later than 60 days after receiving the request for payment.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 25740.5 of the Public Resources Code,
- 2 as added by Section 4 of Chapter 464 of the Statutes of 2006, is
- 3 amended to read:
- 4 25740.5. (a) The commission shall optimize public investment
- 5 and ensure that the most cost-effective and efficient investments
- 6 in renewable energy resources are vigorously pursued.

1 (b) The commission's long-term goal shall be a fully competitive  
2 and self-sustaining supply of electricity generated from renewable  
3 sources.

4 (c) The program objective shall be to increase, in the near term,  
5 the quantity of California's electricity generated by in-state  
6 renewable electricity generation facilities, while protecting system  
7 reliability, fostering resource diversity, and obtaining the greatest  
8 environmental benefits for California residents.

9 (d) An additional objective of the program shall be to identify  
10 and support emerging renewable technologies in distributed  
11 generation applications that have the greatest near-term commercial  
12 promise and that merit targeted assistance.

13 (e) The Legislature recommends allocations among all of the  
14 following:

15 (1) (A) Except as provided in subparagraph (B), production  
16 incentives for new in-state renewable electricity generation  
17 facilities, including repowered or refurbished facilities.

18 (B) Allocations shall not be made for electricity that is generated  
19 by an in-state renewable electricity generation facility ~~that remains~~  
20 ~~under~~ *having* an electricity purchase contract with an electrical  
21 corporation originally entered into prior to September 24, 1996,  
22 whether amended or restated thereafter.

23 (C) Notwithstanding subparagraph (B), production incentives  
24 may be allowed in any month for incremental new electricity  
25 generated by an in-state renewable electricity generation facility  
26 that is repowered or refurbished, where the electricity is delivered  
27 under an electricity purchase contract with an electrical corporation  
28 originally entered into prior to September 24, 1996, whether  
29 amended or restated thereafter, if all of the following occur:

30 (i) The facility's electricity purchase contract provides that all  
31 electricity delivered and sold under the contract is paid at a price  
32 that does not exceed the Public Utilities Commission approved  
33 short-run avoided cost of energy.

34 (ii) Either of the following is true:

35 (I) The electricity purchase contract is amended to provide that  
36 the kilowatthours used to determine the capacity payment in any  
37 time-of-delivery period in any month under the contract shall be  
38 equal to the actual kilowatthour production, but no greater than  
39 the five-year average of the kilowatthours delivered for the

1 corresponding time-of-delivery period and month, in the years  
2 1994 to 1998, inclusive.

3 (II) The facility's installed capacity as of December 31, 1998,  
4 is less than 75 percent of the nameplate capacity as stated in the  
5 electricity purchase contract, the electricity purchase contract is  
6 amended to provide that the kilowatthours used to determine the  
7 capacity payment in any time-of-delivery period in any month  
8 under the contract shall be equal to the actual kilowatthour  
9 production, but no greater than the product of the five-year average  
10 of the kilowatthours delivered for the corresponding  
11 time-of-delivery period and month, in the years 1994 to 1998,  
12 inclusive, and the ratio of installed capacity as of December 31 of  
13 the previous year, but not to exceed contract nameplate capacity,  
14 to the installed capacity as of December 31, 1998.

15 (iii) The production incentive is payable only with respect to  
16 the kilowatthours delivered in a particular month that exceeds the  
17 corresponding five-year average calculated pursuant to clause (ii).

18 (2) Rebates, buydowns, or equivalent incentives for emerging  
19 renewable technologies.

20 (3) Customer education.

21 (4) Incentives for reducing fuel costs, that are confirmed to the  
22 satisfaction of the commission, at solid fuel biomass energy  
23 facilities in order to provide demonstrable environmental and  
24 public benefits, including improved air quality.

25 (5) Solar thermal generating resources that enhance the  
26 environmental value or reliability of the electrical system and that  
27 require financial assistance to remain economically viable, as  
28 determined by the commission. The commission may require  
29 financial disclosure from applicants for purposes of this paragraph.

30 (6) Specified fuel cell technologies, if the commission makes  
31 all of the following findings:

32 (A) The specified technologies have similar or better air  
33 pollutant characteristics than renewable technologies in the report  
34 made pursuant to Section 25748.

35 (B) The specified technologies require financial assistance to  
36 become commercially viable by reference to wholesale generation  
37 prices.

38 (C) The specified technologies could contribute significantly  
39 to the infrastructure development or other innovation required to

1 meet the long-term objective of a self-sustaining, competitive  
2 supply of electricity generated from renewable sources.

3 (7) Existing wind-generating resources, if the commission finds  
4 that the existing wind-generating resources are a cost-effective  
5 source of reliable energy and environmental benefits compared  
6 with other in-state renewable electricity generation facilities, and  
7 that the existing wind-generating resources require financial  
8 assistance to remain economically viable. The commission may  
9 require financial disclosure from applicants for the purposes of  
10 this paragraph.

11 (f) Notwithstanding any other provision of law, moneys  
12 collected for renewable energy pursuant to Article 15 (commencing  
13 with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the  
14 Public Utilities Code shall be transferred to the Renewable  
15 Resource Trust Fund. Moneys collected between January 1, 2007,  
16 and January 1, 2012, shall be used for the purposes specified in  
17 this chapter.

18 *SEC. 2. Section 25740.5 of the Public Resources Code, as*  
19 *added by Section 9 of Chapter 512 of the Statutes of 2006, is*  
20 *repealed.*

21 ~~25740.5. (a) The commission shall optimize public investment~~  
22 ~~and ensure that the most cost-effective and efficient investments~~  
23 ~~in renewable resources are vigorously pursued.~~

24 ~~(b) The commission's long-term goal shall be a fully competitive~~  
25 ~~and self-sustaining California renewable energy supply.~~

26 ~~(c) The program objective shall be to increase, in the near term,~~  
27 ~~the quantity of California's electricity generated by in-state~~  
28 ~~renewable energy resources, while protecting system reliability,~~  
29 ~~fostering resource diversity, and obtaining the greatest~~  
30 ~~environmental benefits for California residents.~~

31 ~~(d) An additional objective of the program shall be to identify~~  
32 ~~and support emerging renewable energy technologies that have~~  
33 ~~the greatest near-term commercial promise and that merit targeted~~  
34 ~~assistance.~~

35 ~~(e) The Legislature recommends allocations among all of the~~  
36 ~~following:~~

37 ~~(1) (A) Except as provided in subparagraph (B), production~~  
38 ~~incentives for new renewable energy, including repowered or~~  
39 ~~refurbished renewable energy.~~

1 ~~(B) Allocations shall not be made for renewable energy that is~~  
2 ~~generated by a project that remains under a power purchase contract~~  
3 ~~with an electrical corporation originally entered into prior to~~  
4 ~~September 24, 1996, whether amended or restated thereafter.~~

5 ~~(C) Notwithstanding subparagraph (B), production incentives~~  
6 ~~for incremental new, repowered, or refurbished renewable energy~~  
7 ~~from existing projects under a power purchase contract with an~~  
8 ~~electrical corporation originally entered into prior to September~~  
9 ~~24, 1996, whether amended or restated thereafter, may be allowed~~  
10 ~~in any month, if all of the following occur:~~

11 ~~(i) The project's power purchase contract provides that all~~  
12 ~~energy delivered and sold under the contract is paid at a price that~~  
13 ~~does not exceed the Public Utilities Commission approved~~  
14 ~~short-run avoided cost of energy.~~

15 ~~(ii) Either of the following:~~

16 ~~(I) The power purchase contract is amended to provide that the~~  
17 ~~kilowatthours used to determine the capacity payment in any~~  
18 ~~time-of-delivery period in any month under the contract shall be~~  
19 ~~equal to the actual kilowatthour production, but no greater than~~  
20 ~~the five-year average of the kilowatthours delivered for the~~  
21 ~~corresponding time-of-delivery period and month, in the years~~  
22 ~~1994 to 1998, inclusive.~~

23 ~~(II) If a project's installed capacity as of December 31, 1998,~~  
24 ~~is less than 75 percent of the nameplate capacity as stated in the~~  
25 ~~power purchase contract, the power purchase contract is amended~~  
26 ~~to provide that the kilowatthours used to determine the capacity~~  
27 ~~payment in any time-of-delivery period in any month under the~~  
28 ~~contract shall be equal to the actual kilowatthour production, but~~  
29 ~~no greater than the product of the five-year average of the~~  
30 ~~kilowatthours delivered for the corresponding time-of-delivery~~  
31 ~~period and month, in the years 1994 to 1998, inclusive, and the~~  
32 ~~ratio of installed capacity as of December 31 of the previous year,~~  
33 ~~but not to exceed contract nameplate capacity, to the installed~~  
34 ~~capacity as of December 31, 1998.~~

35 ~~(iii) The production incentive is payable only with respect to~~  
36 ~~the kilowatthours delivered in a particular month that exceeds the~~  
37 ~~corresponding five-year average calculated pursuant to clause (ii).~~

38 ~~(2) Rebates, buydowns, or equivalent incentives for emerging~~  
39 ~~renewable technologies.~~

40 ~~(3) Customer education.~~

1 ~~(4) Incentives for reducing fuel costs that are confirmed to the~~  
2 ~~satisfaction of the commission at solid fuel biomass energy~~  
3 ~~facilities in order to provide demonstrable environmental and~~  
4 ~~public benefits, including, but not limited to, air quality.~~

5 ~~(5) Solar thermal generating resources that enhance the~~  
6 ~~environmental value or reliability of the electrical system and that~~  
7 ~~require financial assistance to remain economically viable, as~~  
8 ~~determined by the commission. The commission may require~~  
9 ~~financial disclosure from applicants for purposes of this paragraph.~~

10 ~~(6) Specified fuel cell technologies, if the commission makes~~  
11 ~~all of the following findings:~~

12 ~~(A) The specified technologies have similar or better air~~  
13 ~~pollutant characteristics than renewable technologies in the report~~  
14 ~~made pursuant to Section 25748.~~

15 ~~(B) The specified technologies require financial assistance to~~  
16 ~~become commercially viable by reference to wholesale generation~~  
17 ~~prices.~~

18 ~~(C) The specified technologies could contribute significantly~~  
19 ~~to the infrastructure development or other innovation required to~~  
20 ~~meet the long-term objective of a self-sustaining, competitive~~  
21 ~~supply of renewable energy.~~

22 ~~(7) Existing wind-generating resources, if the commission finds~~  
23 ~~that the existing wind-generating resources are a cost-effective~~  
24 ~~source of reliable energy and environmental benefits compared~~  
25 ~~with other eligible sources, and that the existing wind-generating~~  
26 ~~resources require financial assistance to remain economically~~  
27 ~~viable. The commission may require financial disclosure from~~  
28 ~~applicants for the purposes of this paragraph.~~

29 ~~(f) Notwithstanding any other provision of law, moneys~~  
30 ~~collected for renewable energy pursuant to Article 15 (commencing~~  
31 ~~with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the~~  
32 ~~Public Utilities Code shall be transferred to the Renewable~~  
33 ~~Resource Trust Fund. Moneys collected between January 1, 2007,~~  
34 ~~and January 1, 2012, shall be used for the purposes specified in~~  
35 ~~this chapter.~~

36 *SEC. 3. Section 25742 of the Public Resources Code is*  
37 *amended to read:*

38 25742. (a) Ten percent of the funds collected pursuant to the  
39 renewable energy public goods charge shall be used for programs  
40 that are designed to achieve fully competitive and self-sustaining

1 existing in-state renewable electricity generation facilities, and to  
2 secure for the state the environmental, economic, and reliability  
3 benefits that continued operation of those facilities will provide,  
4 during the 2007–2011 investment cycle. Eligibility for incentives  
5 under this section shall be limited to those technologies found  
6 eligible for funds by the commission pursuant to paragraphs (4),  
7 (5), and (7) of subdivision (e) of Section 25740.5.

8 (b) Any funds used to support in-state renewable electricity  
9 generation facilities pursuant to this section shall be expended in  
10 accordance with the provisions of this chapter.

11 (c) Facilities that are eligible to receive funding pursuant to this  
12 section shall be registered in accordance with criteria developed  
13 by the commission and those facilities shall not receive payments  
14 for any electricity produced that has any of the following  
15 characteristics:

16 (1) Is sold at monthly average rates equal to or greater than the  
17 applicable target price, as determined by the commission.

18 (2) Is used onsite.

19 (d) Existing facilities generating electricity from biomass energy  
20 shall be eligible for funding and otherwise considered an in-state  
21 renewable electricity generation facility only if they report to the  
22 commission the types and quantities of biomass fuels used and  
23 certify to the satisfaction of the commission that fuel utilization is  
24 limited to the fuels specified in subdivision (f) of Section 25743.  
25 The commission shall report the types and quantities of biomass  
26 fuels used by each facility to the Legislature in the reports prepared  
27 pursuant to Section 25748.

28 (e) (1) Each existing facility seeking an award pursuant to this  
29 section shall be evaluated by the commission ~~to determine~~ *based*  
30 *on* the amount of the funds being sought, the cumulative amount  
31 of funds the facility has received previously from the commission  
32 and other state sources, the value of any past and current federal  
33 or state tax credits, the facility’s contract price for energy and  
34 capacity, the prices received by similar facilities, the market value  
35 of the facility, and the likelihood that the award will make the  
36 facility competitive and self-sustaining within the 2007–2011  
37 investment cycle. ~~The~~

38 (2) *The* commission shall use this evaluation to determine the  
39 value of an award to the public relative to other renewable energy  
40 investment alternatives. ~~The~~

1 (3) The commission shall compile its findings and report them  
2 to the Legislature in the reports prepared pursuant to Section 25748.

3 *SEC. 4. Section 387 of the Public Utilities Code is amended*  
4 *to read:*

5 387. (a) Each governing body of a local publicly owned electric  
6 utility, as defined in Section 9604, shall be responsible for  
7 implementing and enforcing a renewables portfolio standard that  
8 recognizes the intent of the Legislature to encourage renewable  
9 resources, while taking into consideration the effect of the standard  
10 on rates, reliability, and financial resources and the goal of  
11 environmental improvement.

12 (b) Each local publicly owned electric utility shall report, on an  
13 annual basis, to its customers and to the State Energy Resources  
14 Conservation and Development Commission, the following:

15 (1) Expenditures of public goods funds collected pursuant to  
16 Section 385 for eligible renewable energy resource development.  
17 Reports shall contain a description of programs, expenditures, and  
18 expected or actual results.

19 (2) (A) The resource mix used to serve its customers by fuel  
20 type. Reports shall contain the contribution of each type of  
21 renewable energy resource with separate categories for those fuels  
22 that are eligible renewable energy resources as defined in Section  
23 399.12, except that the electricity is delivered to the local publicly  
24 owned electric utility and not a retail seller. ~~Electricity~~

25 (B) *Electricity* shall be reported as having been delivered to the  
26 local publicly owned electric utility from an eligible renewable  
27 energy resource when the electricity would qualify for compliance  
28 with the renewables portfolio standard if it were delivered to a  
29 retail seller. *It is the intent of the Legislature in enacting this*  
30 *subparagraph to preserve the eligibility of electricity generated*  
31 *by a small hydroelectric generation facility that is sold to a retail*  
32 *seller within California, including electricity sold to a local*  
33 *publicly-owned electric utility, to meet the renewable portfolio*  
34 *standard, when that generation meets the criteria set forth in*  
35 *Section 399.12.*

36 (3) The utility's status in implementing a renewables portfolio  
37 standard pursuant to subdivision (a) and the utility's progress  
38 toward attaining the standard following implementation.

39 ~~SECTION 1. Section 25745 is added to the Public Resources~~  
40 ~~Code, to read:~~

1     ~~25745. In making awards pursuant to Section 25744, the~~  
2     ~~commission shall complete its determination regarding the~~  
3     ~~awarding of supplemental energy payments no later than 60 days~~  
4     ~~after receiving the request for payment.~~

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